

BOARD MEETING

Wednesday, January 11, 2006
Las Vegas Chamber of Commerce
3720 Howard Hughes Parkway
Las Vegas, Nevada

and

Thursday, January 12, 2006
Legislative Counsel Bureau – Grant Sawyer Building
555 E Washington Avenue – Room 4412
Las Vegas, Nevada

The meeting was called to order at 9:00 a.m. by Joe Kellogg, Board President.

Board Members Present:

Dave Wuest
Leo Basch
Ray Seidlinger

Keith Macdonald
Katie Craven

Joe Kellogg
Ann Peterson

Board Members Absent:

Board Staff Present:

Larry Pinson

Jeri Walter

Louis Ling

Keith Marcher

CONSENT AGENDA

1. Approval of December 8, 2005, Minutes
2. Applications for Out-of-State Pharmacy – Non Appearance:
 - A. Partners Healthcare of Massachusetts, LLC – Marlborough, MA
 - B. PrecisionRx Specialty Solutions – Mason, OH
 - C. Star Rx – Daytona Beach, FL

Applications for Out-of-State Wholesaler – Non Appearance:

- D. Carolina Supply Chain Services – Winston-Salem, NC

E. West-Ward Pharmaceutical Corp. – Eatontown, NJ

Applications for Out-of-State MDEG – Non Appearance:

F. Atlas Medical Equipment, Inc. – Inglewood, CA

G. CareSource Inc. – Shreveport, LA

H. Orbit Medical Inc. – Salt Lake City, UT

I. SunMed Medical Systems, LLC – Marlton, NJ

Applications for Nevada Pharmacy – Non Appearance:

J. Eagle RX LLC – Reno

K. Walgreens #02590 – North Las Vegas

L. Walgreens #02598 – Las Vegas

M. Wal-Mart Pharmacy #10-3847 – Mesquite

Applications for Nevada MDEG – Non Appearance:

N. Divine Health Products – Las Vegas

O. Intymak Medical – Las Vegas

P. Medastat USA, LLC – Las Vegas

Q. Medi-Tech CPAP Systems – Las Vegas

R. Valley View Medical Supply – Las Vegas

S. Carolina Supply Chain Services – Reno

Discussion:

The consent agenda applications and supporting documents were reviewed. Items H, J, K, L and M were pulled to vote on individually. It was pointed out that on page 10 of the proposed minutes that it was not noted that Sheila Leslie had not read the language presented regarding the conscience clause she was testifying against.

Board Action:

Motion: Katie Craven read the information related to the consent items and found the information to be accurate and complete and moved for approval of items 1 and 2 with the exception of Items H, J, K, L and M and the addition of Sheila Leslie's comment in the December 2005 minutes.

Second: Dave Wuest

Action: Passed Unanimously

NOTE: Dave Wuest recused from participation in the vote on Item 2J as he is married to the applicant.

Larry Pinson explained there was a request for a bathroom waiver on Eagle Rx. Mr. Pinson explained that the pharmacy was only going to be open one day per week for a few hours to make a specific product for a podiatrist to be dispensed pursuant to a prescription.

Motion: Keith Macdonald moved to approve Item 2J including the bathroom waiver.

Second: Katie Craven

Action: Passed Unanimously

NOTE: Leo Basch recused from participation in the vote on Items 2K and L as he is employed by Walgreens

Motion: Katie Craven moved to approve Items 2K and L.

Second: Ray Seidlinger

Action: Passed Unanimously

NOTE: Keith Macdonald and Joe Kellogg both recused from participation in the vote on Item 2M as they both work for Wal-Mart.

Motion: Ray Seidlinger moved to accept Item 2M.

Second: Katie Craven

Action: Passed Unanimously

Motion: Leo Basch moved to deny Item 2H as the application is incomplete.

Second: Katie Craven

Action: Passed Unanimously

Application for Nevada Wholesaler – Non Appearance:

REGULAR AGENDA

3. Application for Nevada MDEG – Appearance:

Aadvantage Home Medical – Las Vegas

Rory Chin appeared and was sworn by President Kellogg prior to answering questions or offering testimony.

Mr. Chin was represented by Kristopher Rath.

Board staff pulled the application for Aadvantage Home Medical from the December consent agenda and requested him to appear at this meeting to explain why he was engaged in business before he was licensed with the Board.

Mr. Rath explained this is Mr. Chin's first attempt at business ownership. He provided MDEG products to Nathan Addleson and executed a contract with them prior to being licensed with the Board of Pharmacy. Mr. Rath explained that Mr. Chin was formerly employed by Home Care America and decided to go into business for himself as he had customers that wanted Mr. Chin to be their provider.

Mr. Chin admitted to making a mistake by providing service prior to being licensed by the Board. He misinterpreted our Board law. He cited the MDEG regulations and statutes and did what he felt was appropriate. Mr. Chin said that he was asked to deliver some equipment for an unreliable respiratory therapist. The respiratory therapist could not be located for several hours then it was determined that he was out of state. Mr. Chin was told to just sign the paperwork, make sure the patient was satisfied, then the respiratory therapist would fix it when he returned. He signed the respiratory therapist's name to the paperwork. Mr. Chin stated that his former employer, Mr. Zampino, asked him if he wanted to go into partnership at Home Care America. Mr. Chin was not given a contract, but agreed to the conditions verbally. Mr. Chin and his wife both quit their jobs and went to work at Home Care America. Mr. Chin stated he spoke with Mr. Zampino again and asked about a contract and was told there was never going to be a contract. Mr. Chin and his wife needed to make a decision as to what to do and he decided to go out on his own as a MDEG provider. Mr. Chin is ready to operate. He and his wife have put everything they have into this business endeavor and asked the Board to grant him the application.

Board Action:

Motion: Leo Basch moved to approve the application for MDEG provider.

Second: Katie Craven seconded with the amendment that Aadvantage Home Medical be on probation for one year and that they be inspected two times during the probationary period.

Mr. Basch accepted the amendment.

Action: Passed Unanimously

4. Disciplinary Actions:

- | | | |
|----|--------------------------|----------------|
| A. | Brendan D. Ly, R.Ph | (05-026-RPH-S) |
| B. | Sunrise Medical Pharmacy | (05-026-PH-S) |

Mr. Ling explained to the Board that Mr. Ly had misfiled a prescription for a two-year-old cancer patient. The physician prescribed 6-mercaptopurine (6-MP) 50 mg. tablets and Mr. Ly filled the prescription with azathioprine. Mr. Ly thought that azathioprine was the generic for 6-MP. Mr. Ly and Sunrise Medical Pharmacy were both offered stipulated agreements which they both accepted. The stipulated agreement offered was a \$250 fine and \$250 administrative fee for each Mr. Ly and Sunrise.

The Board discussed the circumstances of the case and determined they did not feel the stipulated agreement was adequate.

Board Action:

Motion: Ray Seidlinger moved to reject the stipulated agreement as presented.

Second: Leo Basch

Action: Passed Unanimously

Motion: Ray Seidlinger moved to increase the fine to \$500 plus the fees and costs in this matter plus Mr. Ly would be required to take six continuing education units – 1 hour on generic substitution and 5 hours on chemo therapeutics.

Second: Katie Craven

Action: Passed Unanimously

- | | | |
|----|--------------------|----------------|
| C. | Anthony Soto, R.Ph | (05-040-RPH-S) |
| D. | CVS/pharmacy #4495 | (05-040-PH-S) |

Mr. Ling explained that Mr. Soto had misread a prescription for a ten-year-old cancer patient. The physician prescribed 24 dosage units of Methotrexate 2.5 mg. and 30 dosage units of Folinic Acid 1 mg. (Leucovorin calcium) to treat his patient. Mr. Soto filled the prescriptions and at counseling he advised the patients mother that she could purchase folic acid over the counter and it would be less expensive not realizing that the prescription was for Folinic acid not folic acid. Mr. Soto and CVS #4495 were both offered stipulated agreements with a fine of \$1,000 and administrative fees of \$250.

Board Action:

Motion: Dave Wuest moved to accept the stipulated agreements as presented.

Second: Keith Macdonald

Action: Passed Unanimously

E. Wendy Nordella, PTT (05-047-PTT-S)

NOTE: Ray Seidlinger recused from participation in this matter as Ms. Nordella was employed by Sav-On.

Mr. Ling explained that Ms. Nordella failed to appear and described the steps taken by Board staff to ensure she received her Notice. Ms. Nordella was dismissed from employment at Sav-On because she had been stealing Valium and Xanax for her boyfriend's personal use.

Board Action:

Motion: Keith Macdonald moved to find Ms. Nordella guilty of the alleged violations except for NRS 453.411(1).

Second: Dave Wuest

Action: Passed Unanimously

Motion: Keith Macdonald moved to revoke Ms. Nordella's pharmaceutical technician registration.

Second: Dave Wuest

Action: Passed Unanimously

F. Amy J. Bunkelman, PT (05-048-PT-S)

NOTE: Ray Seidlinger recused from participation in this matter as Ms. Bunkelman was employed by Sav-On.

Mr. Ling explained that Ms. Bunkelman failed to appear and described the steps taken by Board staff to ensure she received her Notice. Ms. Bunkelman was dismissed from employment because she was found stealing bottles of 100 of hydrocodone and selling them on the street for \$275 per bottle.

Board Action:

Motion: Keith Macdonald moved to find Ms. Bunkelman guilty of the alleged violations except for NRS 453.411(1).

Second: Katie Craven

Action: Passed Unanimously

Motion: Keith Macdonald moved to revoke Ms. Bunkelman's pharmaceutical technician registration.

Second: Katie Craven

Amend: Leo Basch asked to consider amending the motion to include restitution to Sav-On of \$275 times 8 bottles stolen.

The amendment was accepted by the first and the second.

Action: Passed Unanimously

G. John L. Dalton, PT (05-059-PT-S)

NOTE: Joe Kellogg disclosed that he had worked with Mr. Dalton in the past.

Mr. Ling explained that Mr. Dalton failed to appear and described the steps taken by Board staff to ensure he received his Notice. Mr. Dalton was dismissed from employment because he was found to be embezzling cash from his employer, Smith's. He estimated he was stealing approximately \$800 per day for about two years. Bonnie Brandt, Smith's district pharmacy supervisor, did an audit and in just one year Mr. Dalton had embezzled \$142,000. Mr. Dalton was arrested and his case is still pending.

Board Action:

Motion: Leo Basch moved to find Mr. Dalton guilty of the alleged violations.

Second: Ray Seidlinger

Action: Passed Unanimously

Motion: Leo Basch moved to revoke Mr. Dalton's pharmaceutical technician registration.

Second: Katie Craven

Action: Passed Unanimously

H. Scott T. Larsen, R.Ph (05-033-RPH-S)

I. Walgreens #03871 (05-033-RPH-S)

NOTE: Leo Basch recused from participation as he is employed by Walgreens.

Scott Larsen and Holly Prievo appeared and were sworn by President Kellogg prior to answering questions or offering testimony.

Rob Graham and Duane Pinion were counsel representing Walgreens and Mr. Larsen.

Louis Ling called the complainant in this matter to testify.

Donna Galley appeared and was sworn by President Kellogg prior to answering questions or offering testimony.

Ms. Galley described her condition. She has had five open heart surgeries, has three heart valves and two pace makers. Ms. Galley takes 2.5 to 3.5 mg. of Coumadin so her blood maintains a specific level to ensure she does not clot. She also takes 10 mg. Valium to help her sleep from the noise of the pacemakers and stress. Ms. Galley had been on this therapy for several years. Mr. Galley, Ms. Galley's husband, picked up a refill of Ms. Galley's medications. When Ms. Galley was adding the remaining Coumadin from the previous fill with the new prescription she noticed that the tablets were different. Mr. Galley returned to the pharmacy to find out what the medication from the previous refill was and was told Ms. Galley would need to see her doctor. Ms. Galley saw her doctor the following day and found that she had been taking 5 mg. tablets of Valium rather than Coumadin. She had not been taking her Coumadin for almost a month. Ms. Galley had complained about being tired all the time and did not know why. Ms. Galley had lab work done and it was found that she had an inadequate blood level since she had not been taking her Coumadin.

Dallas Galley, Ms. Galley's husband, appeared and was sworn by President Kellogg prior to answering questions or offering testimony.

Mr. Galley described his wife's condition while they were on vacation. The whole time they were away, Ms. Galley was listless, constantly tired and slept a lot and could not visit with family members.

Mr. Galley advised the Board that when he returned the medication to the pharmacy and asked what it was, he was not told but directed that his wife go to her doctor. He said that the pharmacist on duty would not tell him what the medication was nor did he even advise that she not take the medication any more. Mr. Galley described his experience with Walgreens as completely unhelpful.

Ms. Prievo gave a glowing description of Scott Larsen and his history with Walgreens. She said that at the time of the error the pharmacy had a Baker cell and no scanners. Mr. Larsen verified the prescription, however he was not on duty when Mr. Galley returned with the medication asking what it was. The pharmacist that Mr. Galley spoke with is no longer with Walgreens. Mr. Larsen was working at the time of the error and is now the managing pharmacist for Walgreens #3871. Mr. Larsen directed the matter to Walgreens insurance company because he said Mr. Galley was irrational. Mr. Larsen did not contact Ms. Galley.

Louis Ling gave closing statements and advised the Board that he was not recommending systemic changes, just monetary measures. He suggested a \$500 fine for Mr. Larsen and Walgreens plus fees and costs.

Rob Graham indicated that there was no proof the mistake lay with Mr. Larsen or Walgreens. Mr. Graham concurs that this was an unfortunate incident, however he does not believe it happened within Walgreens because Ms. Galley was mixing her medications. Mr. Graham asked for a dismissal.

Keith Macdonald asked if a patient profile had been run to determine if Ms. Galley had access to 5 mg. Valium. It was determined that a profile had not been run.

Mr. Graham presented a copy of the transferred prescription for Ms. Galley. It was marked Defense Exhibit 1 and accepted into the record.

After Board discussion and a failed motion, the following was determined.

Board Action:

Motion: Dave Wuest moved to find Mr. Larsen not guilty of the First Cause of Action.

Second: Keith Macdonald

Action: Passed Unanimously

Motion: Dave Wuest moved to find Walgreens #3871 not guilty of the Second Cause of Action.

Second: Ray Seidlinger

Action: Passed Unanimously

J. Scott T. Larsen, R.Ph (05-034-RPH-S)

K. Walgreens #03842 (05-034-RPH-S)

NOTE: Leo Basch recused from participation as he is employed by Walgreens.

Louis Ling explained that he had no witnesses to testify in this case. He advised that this was an uncontested misfill. Mr. Larsen admitted that he misread the prescription and filled Patient T's prescription for Flumadine with flecainide, an antiarrhythmic drug.

Board Action:

Motion: Keith Macdonald moved to find Mr. Larsen guilty of the First Cause of Action.

Second: Ray Seidlinger

Action: Passed Unanimously

Motion: Keith Macdonald moved to dismiss the Second Cause of Action.

Second: Ray Seidlinger

Action: Passed Unanimously

Motion: Keith Macdonald moved to find Walgreens #3842 guilty of the Third Cause of Action.

Second: Ray Seidlinger

Action: Passed Unanimously

Motion: Keith Macdonald moved to fine Mr. Larsen \$500 plus one-half the costs and fees in this matter due in 90 days.

Second: Dave Wuest

Action: Passed Unanimously

Motion: Keith Macdonald moved to fine Walgreens #3842 \$500 plus one-half the costs and fees in this matter due in 90 days.

Second: Dave Wuest

Action: Passed Unanimously

L.	Leslie J. Schweizer, R.Ph	(05-038-RPH-S)
M.	Walgreens #05646	(05-038-PH-S)

NOTE: Leo Basch recused from participation as he is employed by Walgreens. Ray Seidlinger disclosed that he had worked with Ms. Schweizer in the past.

Jowette Padua appeared and was sworn by President Kellogg prior to answering questions or offering testimony.

Ms. Padua testified that she is diabetic and takes Novalog 70/30, a mixture of fast and slow acting insulin, twice a day and she has her prescriptions filled at Walgreens #5646 in Pahrump. Ms. Padua had her insulin refilled and the pharmacy did not have enough so they gave Ms. Padua a partial fill and called her when the remainder came in. The remaining three boxes were taped together with a label affixed to one box only. Ms. Padua picked them up, returned home, opened one of the boxes she had just received

from the pharmacy and injected herself before dinner. Ms. Padua stated that she went to bed after dinner and awoke later sweating and cold. Ms. Padua checked her blood sugar and it registered 58, where she normally registers 200 or more. Ms. Padua ate some candy to get her sugar level up and then checked the boxes she received from Walgreens #5646. One of the boxes that was taped together with two others was Novalog 70/30. The other two boxes were regular Novalog – a fast acting insulin product.

Leslie Schweizer and Matt Forster appeared and were sworn by President Kellogg prior to answering questions or offering testimony.

Mr. Forster testified as to Ms. Schweizer's professional pharmacist practices and stated that she is an excellent counseling pharmacist. Ms. Schweizer advised the Board that she has changed the practices in her pharmacy that no boxes of any medication will be taped together and each box will have its own label. The NDC code was checked on the top box of the three that were given to Ms. Padua and the top box was Novalog 70/30 – the other two were not.

Mr. Ling and Mr. Graham gave closing remarks.

Board Action:

Motion: Ray Seidlinger moved to find Ms. Schwiezer guilty of the First Cause of Action..

Second: Katie Craven

Action: Passed Unanimously

Motion: Katie Craven moved to fine Ms. Schwiezer \$250 and split the costs and fees with Walgreens.

Second: Dave Wuest

Action: Passed Unanimously

Motion: Ray Seidlinger moved to find Walgreens #5646 guilty of the Second Cause of Action.

Second: Katie Craven

Action: Passed Unanimously

Motion: Ray Seidlinger moved to fine Walgreens #5646 \$250 and split the costs and fees with Ms. Schweizer.

Second: Katie Craven

Action: Passed Unanimously

N.	Eliry A. Greeley, R.Ph	(05-046-RPH-S)
O.	Walgreens #05862	(05-046-PH-S)

NOTE: Leo Basch recused from participation as he is employed by Walgreens.

Holly Prievo and Elery Greeley appeared and were sworn by President Kellogg prior to answering questions or offering testimony.

There were no witnesses for this matter and Mr. Ling explained that Patient MSG was allergic to penicillin and Ms. Greeley filled a prescription for Patient MSG even though there was an allergy warning in the Walgreens computer system. Ms. Greeley explained that she has changed her counseling procedures to include an allergy question. Ms. Greeley admitted that the allergy alert was in the system and it was bypassed.

Mr. Ling and Mr. Graham gave closing statements.

Board Action:

Motion: Katie Craven moved to find Ms. Greeley guilty of the First Cause of Action.

Second: Keith Macdonald

Action: Passed Unanimously

Motion: Katie Craven moved to fine Ms. Greeley \$250 and split the fees and costs with Walgreens #5862.

Second: Ray Seidlinger

Action: Passed Unanimously

Motion: Katie Craven moved to find Walgreens #5862 guilty of the Second Cause of Action.

Second: Keith Macdonald

Action: Passed Unanimously

Motion: Katie Craven moved to fine Walgreens #5862 and split the fees and costs with Ms. Greeley.

Second: Dave Wuest

Action: Passed Unanimously

P.	Poorva M. Parikh, R.Ph	(05-037-RPH-S)
Q.	Walgreens #06545	(05-037-PH-S)
R.	Walgreens Co.	(05-037-PH-S)

NOTE: Leo Basch recused from participation as he is employed by Walgreens.

Poorva Parikh appeared and was sworn by President Kellogg prior to answering questions or offering testimony.

Mr. Ling advised the Board that there was no contest in this matter. The directions on the label were to inject 2-6 vials rather than the prescribed 2-6 mls.

Ms. Parikh testified that she did make the error. She was counseling the patient at the counseling window for approximately a half-hour, then she asked the patient to move to another location to continue their discussion. Ms. Parikh stated that was why the prescriptions were not logged in the counseling log. Ms. Parikh said that she had learned a great deal from this experience and she has taken continuing education on opiates and pain management. Ms. Parikh now does show and tell counseling.

Mr. Graham presented two exhibits that were admitted into evidence.

Defense Exhibit 1 – Copies of Ms. Parikh's CE certificates

Defense Exhibit 2 – Copy of the prescription

NOTE: Keith Macdonald recused from participation as he had spoken to the complainant several times while he was still the Executive Secretary.

Louis Ling and Rob Graham gave closing remarks and recommendations.

Board Action:

Motion: Dave Wuest moved to find Ms. Parikh guilty of the First Cause of Action.

Second: Ray Seidlinger

Action: Passed Unanimously

Motion: Dave Wuest moved to have a letter of admonition sent to Ms. Parikh.

Second: Ray Seidlinger

Action: Passed Unanimously

Motion: Dave Wuest moved to find Ms. Parikh guilty of the Second Cause of Action.

Second: Katie Craven

Action: Passed With One Negative Vote

Motion: Dave Wuest moved to include documentation of counseling in the letter of admonition.

Second: Katie Craven

Action: Passed Unanimously

Motion: Dave Wuest moved to find Walgreens #6545 guilty of the Third Cause of Action.

Second: Katie Craven

Action: Passed Unanimously

Motion: Katie Craven moved to dismiss the Fourth Cause of Action.

Second: Ray Seidlinger

Action: Split Vote – Motion Fails

Motion: Dave Wuest moved to dismiss the Fourth Cause of Action.

Second: Ray Seidlinger

Action: Passed Unanimously

Motion: Dave Wuest moved to find Walgreens Co. guilty of the Fifth Cause of Action.

Second: Katie Craven

Action: Passed Unanimously

Motion: Dave Wuest moved to assess fees and costs to Walgreen Co.

Second: Ray Seidlinger

Action: Passed Unanimously

S.	Dale E. Hawkins, R.Ph	(05-042-RPH-S)
T.	Walgreens #03845	(05-042-PH-S)
U.	Walgreens Co.	(05-042-PH-S)

NOTE: Leo Basch recused from participation as he is employed by Walgreens.

Dale Hawkins and Matt Forster appeared and were sworn by President Kellogg prior to answering questions or offering testimony.

Louis Ling explained that this involved a two-year old patient that was prescribed Levoxyl 125 mcg. tablets with directions to take ½ tablet by mouth every day. The prescription was filled with Levoxyl 25 mcg. tablets and the patient was only receiving 12.5 mcg. of Levoxyl daily instead of the prescribed 62.5 mcg. Mr. Hawkins and Walgreens do not contest the charges in this matter.

Matt Forster testified that this store is almost impossible to staff. Mr. Hawkins has been the managing pharmacist at that store for approximately two years. They are the only store that handles Nevada Checkup which is a Medicaid program. Not only that, Walgreens #03845 is the only pharmacy in the vicinity. Mr. Forster advised the Board that Mr. Hawkins asked to be relieved of duty at that store and Mr. Forster accepted his request. Mr. Hawkins is now working as a staff pharmacist in a slower store and is focusing on his practice.

Defense Exhibit 1, a copy of the prescription for Patient T, was presented and accepted into the record.

Louis Ling gave closing remarks and recommendations. He suggested Mr. Hawkins do the Your Success Rx program to help him improve his practice of pharmacy. The Third Cause of Action is repeated negligence at Walgreens #3845. Walgreens #3845 is already on probation and is one of the stores already participating in the Your Success Rx program.

Mr. Graham reminded the Board that this was an extremely high volume store that serves Medicaid patients.

Audrey McFarlane and Koon Siwabessy appeared and were sworn by President Kellogg prior to answering questions or offering testimony.

The Walgreens Vision program was put to the test during Hurricane Katrina. They can put the same process into effect at an over-burdened store. Prescriptions are filtered from the over-burdened store to a lower volume store where the data entry and verification functions will be processed and returned to the original store for product filling to balance the workload. Walgreens volunteered to do a demonstration on workload balancing at a future Board meeting for the Board members to see how the process works.

Board Action:

Motion: Dave Wuest moved to find Mr. Hawkins guilty of the First Cause of Action.

Second: Katie Craven

Action: Passed Unanimously

Motion: Dave Wuest moved to find Walgreens #3845 guilty of the Second Cause of Action.

Second: Katie Craven

Action: Passed Unanimously

Motion: Dave Wuest moved to find Walgreens Co. guilty of the Third Cause of Action.

Second: Katie Craven

Action: Passed Unanimously

Motion: Dave Wuest moved to have Mr. Hawkins enroll in Your Success Rx. Mr. Hawkins will pay half of the fee for Your Success Rx and half of the costs and fees in this matter. The remaining fees for Your Success Rx will come from the education fund established years ago earmarked for just such a situation.

Second: Katie Craven

Action: Passed Unanimously

Motion: Dave Wuest moved to extend Walgreens #3845's probation for one year and pay half the costs and fees in this matter.

Second: Katie Craven

Action: Passed Unanimously

5. Walgreens Disciplinary Review – Appearance:

Katie Johnson

Larry Pinson gave an introduction regarding the progress being made in the Walgreens stores that were evaluated.

Ms. Johnson reported that she was well received by the people and stores she worked in. Holley Prieto and Matt Forster did a training session at all of the stores in Nevada. Ms. Johnson found the four stores she evaluated were all well equipped and clean. She did recommend that there are no clear quality counseling procedures being followed and that if they polish that portion of the training program it would help. Ms. Johnson also noted that their customer service needed to be addressed.

Ms. Prieto and Mr. Forster presented an action plan they've been presenting to their pharmacists in Nevada encouraging personal customer service. They have been having monthly cluster meetings and breakfast meetings in a relaxed atmosphere and sharing information. They are posting a "Contact the District Supervisor" sign in all pharmacies to encourage consumers to contact Ms. Prieto or Mr. Forster to mediate a problem between themselves and pharmacy staff. They have instituted a recognition program for pharmacists in Nevada who demonstrate exceptional pharmaceutical care. They are working on error prevention methodologies, patient counseling demos on video are being crafted now and will be completed soon, patient counseling will be noted at drop-off to ensure the patient is counseled. Effective February 1, 2006 a new program will go into effect where a hardstop in the computer system will stop the transaction with the patient until a pharmacist counsels.

Dave Wuest asked if Success Rx is well received and useful. Matt Forster stated that it has been a good experience for someone outside Walgreens to evaluate them and give them their different perspective. He felt it was a good program and found it helpful in re-evaluating their company procedures. Holly Prieto agreed with Mr. Forster.

Ray Seidlinger asked if Walgreens would recommend Success Rx for future use as a tool by the Board and the Walgreens representatives gave a resounding "Yes."

6. Request for Reconsideration of Board Order – Appearance:

Tony L. Huffman, R.Ph

(03-046-RPH-S)

Mr. Huffman appeared and requested a modification of his Order to allow him to be the managing pharmacist for his current employer. Mr. Huffman has been working for Biotech since 2003 and is a Board certified nuclear pharmacist. His current employer would like to promote him to managing pharmacist.

Board Action:

Motion: Keith Macdonald moved to amend Mr. Huffman's Order to allow him to be managing pharmacist at Biotech.

Second: Dave Wuest

Action: Passed Unanimously

7. Request for Technician in Trainee License – Appearance:

Suzanne L. Pinachos

Suzanne Pinachos appeared and was sworn by President Kellogg prior to answering questions or offering testimony.

Ms. Pinachos answered the question on her PTT application that she had been arrested/convicted of a misdemeanor in Maryland. Ms. Pinachos stated that she did not have a drug problem but went through and completed a drug program. She advised the Board that her record had been expunged since she had successfully completed the drug program. Ms. Pinachos explained that her live-in boyfriend had cocaine in the house she shared with him. She said she was arrested by association. Ms. Pinachos was working as a pharmaceutical technician in Maryland, however she did not have to be registered in that state. She would like to become a technician in Nevada.

Board Action:

Motion: Keith Macdonald moved to have Ms. Pinachos evaluated by PRN-PRN. Mr. Espadero can determine if she has a problem or not.

Second: Katie Craven

Action: Passed Unanimously

8. Nevada Institutional Review Board – Appearance:

Dean Friesen

Mr. Friesen appeared before the Board to ask for a representative from the Board of Pharmacy to participate on his committee along with representatives from the Board of Medical Examiners, the Board of Nursing, the Board of Dental Examiners, the DO Board and others to establish regulations for the Institutional Review Board that would coordinate with each of the other Boards.

Board Action:

Motion: Keith Macdonald moved to have Katie Craven represent the Board of Pharmacy.

Second: Dave Wuest

Action: Passed Unanimously

9. General Counsel Report:

Litigation Update

Mr. Ling noted that the hearing on the FMC Puerto Rico matter before Judge Adair is set for January 19th and he invited any Board member interested to attend.

Settlement negotiations are in process in federal court. Rick Reif is no longer in the country. He left owing Santoro Driggs about \$65,000. Mr. Ling indicated he was unsure what will happen and that we are still waiting for the Motion for Summary Junction.

Tom Martino of Optia left Nevada and went to Florida. He was arrested for passing counterfeit drugs in Florida.

Mr. Ling advised the Board that he has been invited to speak in Philadelphia on the wholesaler issue. He also noted that we are preparing to have a RFID committee meeting soon.

10. Executive Secretary Report:

- A. Financial Report
- B. Investment Report

Larry Pinson gave the financial and investment reports to the Board's satisfaction.

C. Pending Policy Questions

Pharmacist Self-Assessment Mechanism (PSAM). California, Tennessee and Idaho are all using this mechanism for pharmacists to assess themselves and are giving CE credit to those that do the self-assessment. Would the Board consider doing the same for Nevada? Larry Pinson will recommend to the CE Committee that they consider this program for CE credit and ask them to identify the number of CE credits pharmacists would be eligible for if they did the self-assessment.

Katherine Eban spoke at a meeting in Florida recently on her book, *Dangerous Diagnosis* and she indicated that she is writing a second book.

Mr. Pinson asked the Board for volunteers to be delegate and alternate for the NABP Annual Meeting. Leo Basch is the delegate and Joe Kellogg will be the alternate.

Larry Pinson advised the Board that 30 other states have opted to move ephedrine and pseudoephedrine products behind the counter and four or five states have actually scheduled the products. Mr. Basch noted that it was a high theft item.

Larry Pinson advised the Board that the e-prescribing regulations seem to be too restrictive with regard to security of the system. Keith Macdonald suggested that we revise the security requirement since people can still fax or call in prescriptions for themselves if they want to. Board staff was directed to bring the e-prescribing regs to Workshop and remove the language.

D. Temporary Licenses

There were no temporary licenses granted since the last Board meeting.

11. Discussion and Determination:

A. Canadian Internet Pharmacy Licensing

Keith Marcher explained the ground rules for this topic and asked the Board members to introduce themselves to the public. Mr. Marcher advised that Board staff would give the background of this issue. There would be comments from legislators and an attorney that is present from Canada. Public comments will be accepted and the public was asked that if they are from a group one person be designated as the assigned speaker. Mr. Marcher advised that he did not want to hear repetitive comments.

Larry Pinson reviewed the Board's progress after the Bill was passed. He and Louis Ling traveled to Canada and met with the Canadian pharmacy groups to learn how Canadian internet pharmacies operate and to outline how our system is envisioned to operate. Canada has a whole different process than we do. Board staff created an application for Canadian Internet Pharmacies and distributed them to those that showed interest. We received ten applications back. Seven of those chose to continue the process. Louis Ling, Joe Depczynski and Mr. Pinson went back to Canada and inspected five pharmacies. Of those, four were acceptable to Board staff. Since that time we learned that Canada has no FDA approved drugs, only drugs approved by Health Canada. Board staff returned to Nevada and asked for an Attorney General Opinion regarding FDA approved drugs. Mr. Pinson asked Louis Ling to continue.

Mr. Ling advised that Board staff is trying to establish a middle ground and noted that he has suggested six options the Board can discuss to try to come to a consensus. The following are the suggestions made to the Board.

Option 1 – Decline to license Canadian pharmacies and return all licensing fees to the applicant Canadian pharmacies.

Option 2 – License Canadian pharmacies, but require them to sell only drugs that comply with the Attorney General's Opinion.

Option 3 – File a petition for declaratory judgment with a Nevada district court.

Option 4 – License the present four applicants that have been inspected and have been found to be acceptable by Board staff.

Option 5 – Decline to license the Canadian applicants at this time, but allow for release of identities of four pharmacies that would have been licensed so that the public could choose to use the services of those four pharmacies even though those pharmacies would remain unlicensed.

Option 6 – Write regulations to define key regulatory terms.

Leo Basch asked if the four pharmacies inspected only carried Health Canada drugs. Mr. Pinson said they can only carry Health Canada drugs by Canadian law and if they do not have a specific drug they utilize an off-shore affiliate who then ships directly to the patient.

George Chanos, Nevada Attorney General and the Board's legal counsel appeared. Mr. Chanos advised the Board that he wrote the opinion that no drug shipped from Canada would be FDA approved. Board staff provided information to the Attorney General that Canada could not provide FDA approved drugs. Barbara Buckley said that was not the intent of the Bill, but there is no language on the record that that is what they really meant. Mr. Chanos noted that compounded drugs equal to FDA approved drugs is not what the legislative record indicates. They were not discussed during session. The Board is not at liberty to open themselves to liability and advises the Board not to participate in allowing themselves to be held responsible to any liability. Mr. Chanos advised the Board that the Attorney General would not represent them if any liability should come from drug importation. He suggested number 1 or number 5 for the Board to consider – or possibly number 3, the declaratory judgment. Number 5 could be done with disclaimers. The AG's office would work with the Board but it would not keep the Board from liability.

Leo Basch asked if there is a law prohibiting the Board from putting information on a website for the public to review. There is no law that Mr. Chanos is aware of.

Barbara Buckley, Joe Heck, Terry Care, Marilyn Kirkpatrick, Valerie Weiner, Mark Menendo, Peggy Pierce, Steven Horsfer, Susan Gerhard, Bob Coffin, Richard Perkins and Francis Allen were present to testify in the South. Randolph Townsend, Bernice Anderson, Bonnie Parnell, and Sheila Leslie, were present in the North to support Assemblywoman Buckley.

Ms. Buckley challenged Mr. Chanos regarding his stance not to follow the intent of the legislature and considered his opinion an unprecedented display of bipartisan behavior. Ms. Buckley suggested the Board adopt regulations, Option 6. She admitted that the Board is in a precarious position since the AG has threatened to withdraw representation of the Board for any liability regarding this matter. Ms. Buckley gave pros and cons of purchasing drugs from Canada on the website and would publish those on the web so the public could make an educated choice.

Keith Macdonald asked what process she could provide to protect the Board if they were to be sued. Ms. Buckley said the Board would have the backing of the legislature.

Leo Basch would like to see something in writing that the Board would be protected legally and asked what she could provide. Ms. Buckley said their legal counsel would have to address this issue. She does not think the Board should have to worry about law suits and advised them to do what is right like the Board did with the wholesalers. Joe Heck noted that it is a good faith effort to provide safe and effective drugs to low income Nevada citizens and would like to see the Board opt for Option 6.

Richard Perkins addressed the financial concerns of the Board. He noted that the legislature has not denied representation to anyone since he has been in the legislature since 1993. Leo Basch wanted to be assured the legislature would pay for the Board's legal fees if necessary. Mr. Perkins said since the legislative commission would approve regulations if the Board was sued for that, the legislature would back us.

Terry Care tracked AB195/SB5 and found it was simple. Drugs coming out of country, from Canada or Mexico, are cheaper. Legislative intent to allow imported drugs needs to go forward.

Francis Allen represents 25,000 plus senior citizens. The issues between Ms. Buckley and Mr. Chanos are simply semantics. The legislative intent was to allow this importation of Canadian drugs.

Randolph Townsend testified from the North regarding whether financial issues can be addressed but he hoped that would not be the defining issue in today's decision. Mr. Townsend stated that if he had to call a special session all the legislators would appear to make that happen to fix the language. He asked the Board to move forward and approve today.

Bernie Anderson, Bonnie Parnell and Sheila Leslie all support Ms. Buckley and assure that it was the legislature's intent to allow Canadian drug purchases.

Brenda Erdoes does not agree with the AGO. The intent of the legislature was to provide an outlet for seniors and others to purchase affordable drugs. Ms. Erdoes stated that she would match their opinion with the AG's any day.

David MacKay, Executive Canadian Pharmacy Association, appeared and commended the Board for their efforts by inspecting the Canadian pharmacies in a very professional manner. Mr. MacKay thought the idea of adopting a safe list is a good idea. He would like to see the Board adopt Option 6, but he said he could live with Option 5. Mr. MacKay said they have worked with other states and noted the formulary can be adjusted to meet our needs.

Numerous members of the public appeared and supported the efforts by Ms. Buckley to import Canadian drugs and asked the Board adopt the legislative intent.

Barbara Buckley and Brenda Erdoes appeared again and addressed the financial resources the Board would need if the AG did not represent them. Ms. Buckley got confirmation that the Legislative Counsel Bureau will commit to stand side by side with the Board of Pharmacy to help them with any legal difficulties they may encounter if they support the legislature's efforts to move forward with Canadian drug importation.

Mr. Chanos reappeared and stated he understands there is a need for less expensive drugs for the Nevada population. They do uphold their opinion that FDA approved drugs means just that. As far as support for the Board, the AG is our legal counsel. Mr. Chanos agrees with Mr. Townsend that a special session of the legislature be called to correct the law. Then the law would be clear and AG would be able to defend our Board against any federal issue that may arise.

President Kellogg closed the Public Comments.

The Board asked for Louis Lings recommendation. Mr. Ling stated that Board staff has been working with Mr. Chanos and Ms. Buckley and we went down the SB5 path until we could go no further. We asked for the AGO, and as legal counsel for the Board, he agrees fundamentally with the Opinion. SB5 has a flaw – Health Canada was removed and the appropriate venue to fix the problem would be through the legislature. If a special session is called, that would be the best solution, however it would be very expensive and inconvenient for the legislators. Mr. Ling said that if the governor and the legislature pull a special session together within the next few weeks that would be best, but if they choose not to do that then Mr. Ling would recommend Option 6. Mr. Ling advised that the earliest we would be able to pass regulations would be June. Our regulations would be a patch for about six months until the legislature could fix the problem during the regular session. Mr. Ling noted that if the Board chose to go with Option 3, the declaratory judgment, it may take longer for that process than waiting for the legislature to reconvene in 2007.

The Board discussed the different options, weighing the pros and cons of each. If they did the regulation process, Option 6, the Board would be able to define exactly what our parameters are and we would have a series of conditions that the Canadian pharmacies would have to adhere to. We could also define the application process.

Board Action:

Motion: Keith Macdonald, noting that no one spoke in opposition to the concept, moved to adopt Option 6 since there will be only six months the regulations would be in effect before the legislature would be back in session to fix the problem permanently.

Second: Ray Seidlinger

Action: Three yes votes, two no votes, President Kellogg voted for the motion and it passed four to two.

It was noted we would bring language to Workshop in March.

Larry Pinson advised the Board that Governor Guinn telephoned and said he would support our regulation process and would allow them to be processed as emergency regulations. After discussion, the Board determined that they would prefer taking the regulation process in the traditional manner.

B. Conditional Interns Pharmacist License

Ray Seidlinger brought this issue to the Board. He said that federal law and state law are conflicting. Foreign graduates can not be interns unless they have social security numbers and they can not get a social security number without a job. After discussion Board staff was directed to provide a provisional license providing they can prove they have applied for a social security card.

C. PT Final Exam

Ray Seidlinger indicated that Renee Coffman at the University of Southern Nevada would help evaluate and establish standards for pharmaceutical technician programs. Since Keith Macdonald is already representing the Board he could be the PT standards person and work with Dr. Coffman.

D. University of Southern Nevada Board Representative

Keith Macdonald was appointed to continue his association with the University of Southern Nevada as the Board's representative.

12. Next Board Meeting:

March 1 & 2, 2006 – Reno, Nevada

13. Public Comments and Discussion of and Deliberation Upon Those Comments

Barry Boudreaux commended the Board on their decision to handle the Canadian drug issue as they did.

Audrey McFarland from Walgreens thanked the Board for the very professional, non-intrusive, respectful manner in which the Your Success Rx program was implemented.